

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

Implementation of Sections 251, 252,
and 253

CC Docket No. 96-98

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COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION

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SUMMARY

Small cable is poised to fulfill a critical role in bringing competition and innovation to the markets for telecommunications services, especially to rural and suburban markets. The Commission has previously recognized the need for rules that accommodate the unique circumstances of small cable. The Small Cable Business Association (“SCBA”) provides the Commission with input essential to the development of regulations that take into consideration those unique factors, thereby facilitating effective implementation of the Telecommunications Act of 1996 (“1996 Act”).

To ensure small cable’s ability to provide competitive services, the Commission must adopt national standards to govern interconnection, unbundling, pricing, resale and arbitration. Without national standards, individual telcos or state commissions can easily raise entry barriers by refusing to deal with small cable or delaying entry efforts with extended and unaffordable administrative proceedings. Without national standards, the uncertainty of ever being able to launch competitive services will not only discourage small cable from trying, but will cause investors and creditors from not even considering these options.

The Commission should establish national standards for key issues such as the definition of good faith and dispute resolution methodologies. Although the Commission must define good faith, small cable needs more than a verbal definition. The Commission must establish negotiating standards and procedures on incumbent LECs to level the playing field

The Commission must also establish streamlined and low-cost dispute resolution mechanisms at the Commission available when small cable seeks redress for the absence of good faith. Without these alternative mechanisms, failure to deal in good faith will go unremedied because small cable will not be able to afford enforcement.

The Commission should also require state authorities to deal with small cable in a knowledgeable and efficient manner. The state authorities should be required to establish special contact persons and procedures to facilitate their understanding of small cable competition issues. By doing so, state proceedings will become not only more efficient, but a more meaningful and affordable process for enforcement of barriers thrown up to hinder small cable..

Although Congress sought to exempt certain rural telcos from interconnection requirements, the exemption must be narrowly applied to avoid undermining the goals of the 1996 Act. Even though the states determine the applicability of the exemption, the Commission must apply uniform national standards to those determinations to avoid creating a patchwork of 50 different sets of interconnection standards. The system must have certainty to encourage small cable to pursue interconnection and develop competition.

Similarly, the limitations on the exemption must also be carefully applied. Rural telcos must classify a request from an in-service-area cable operator as a bona fide request. The Commission must require states to examine the impact of proposed competition on all services and customers. National standards should also carefully screen out those telcos not entitled to exemption. Grandfathered providers of video programming should be limited to those telcos

actually providing service to a significant number of subscribers and even then the area limited to that where that service was provided prior to the 1996 Act.

Small cable faces many challenges. It also constitutes a major source of competition and advancement in telecommunications services for many rural and suburban areas. Small cable's resources to fight regulatory barriers are limited. With appropriate procompetitive regulations, applied on a national basis, small cable can play an important role in accomplishing the goals of the 1996 Act.

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**COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION**

I. INTRODUCTION

The Small Cable Business Association ("SCBA"), through counsel, files these Comments in response to the *Notice of Proposed Rulemaking*, CC Docket No. 96-98, FCC 96-182 (released April 19, 1996) ("*Notice*"). In these Comments, SCBA provides specific recommendations for adoption by the Commission in implementing the provision of Sections 251, 252 and 253 of the 1996 Telecommunications Act ("1996 Act"). To genuinely and efficiently achieve the purposes of the 1996 Act, the Commission must adopt in this proceeding rules that accommodate the unique circumstances of small cable. In separate Comments, SCBA responds to the Initial Regulatory Flexibility Act Analysis in the *Notice*.

The Commission has recognized SCBA as a consistent and critical voice for the needs and concerns of small cable throughout the implementation of the Cable Television and Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). SCBA grew from the grass roots efforts of small operators attempting to cope with the onerous burdens of rate regulation under the 1992 Cable Act.

Through the efforts of SCBA and others, the Commission has recognized two vital aspects of small cable: (1) small cable has efficiently and effectively delivered high quality video programming to regions of the country not typically served by larger entities; and (2) Commission regulations can impose disparate administrative burdens and costs on small cable. In this rulemaking, the Commission can use its experience and adopt rules that will remove barriers to entry for the provision of telecommunications services in the markets served by small cable.

II. COMMISSION RULES SHOULD ACCOMMODATE THE KEY ROLE OF SMALL CABLE IN ACHIEVING THE GOALS OF THE 1996 ACT.

A. Small cable is essential to developing competitive markets for telecommunications services.

Small cable is poised to fulfill a critical role in bringing competition and innovation to the markets for telecommunications services. SCBA members are actively exploring the provision of telecommunications and information services including: facility-based local exchange services, resale of local exchange services, Internet access via cable and conventional modems, and intra and inter LATA toll services. In limited cases small cable systems are already providing some of these services, acting as laboratories for the development of competition.

With adequate consideration in this rulemaking, small cable can promptly bring competition for telecommunication services to niche urban markets, smaller communities and rural markets. Small cable has demonstrated that it can efficiently provide high quality cable services to regions that larger companies choose not to serve. With Commission regulations that accommodate the unique circumstances of small cable, small cable can bring competition and innovation in telecommunications services to these markets as well.

B. Congress and the Commission have recognized that small cable requires special rules.

It is both necessary and proper that the Commission adopt special rules for small cable in these proceedings. Congress and the Commission have recognized that the unique circumstances of small cable require special treatment by law and regulations. In the 1996 Act, Congress expressly removed substantial regulatory burdens from small cable.¹

In implementing the 1992 Act, the Commission gradually developed recognition of the disparate impact of the administrative burdens and costs of rate regulation upon small cable.² In the *Small System Order*, the Commission ultimately recognized that it must adopt a special rate regulation methodology to accommodate the unique circumstances of small cable.³ The Commission should apply its post-1992 Cable Act small cable experience to this rulemaking. At

¹1996 Act § 301(c).

²See *Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket Nos. 92-266 and 93-215, FCC 95-196 (released June 5, 1995) ("*Small System Order*") at ¶¶ 4-12.

³*Small System Order* at ¶¶ 54-64.

the outset, the Commission should establish rules to accommodate the unique circumstances of small cable.

In restructuring regulations to remove economic impediments to entry into local telecommunications markets, the Commission should recognize the unique impediments facing small cable. The fundamental impediment is the administrative burdens and costs of attempting to negotiate with incumbent LECs and the resultant state proceedings that will follow. Small cable also faces unique impediments in rural markets due to the rural telco exception to the duties of incumbent LECs.⁴ Without procompetitive rules that accommodate small cable, these impediments will shackle competition in many markets.

In this proceeding, the Commission can anticipate the barriers to entry facing small cable and adopt rules designed to limit these barriers. In this way, the Commission will genuinely take a proactive role to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to *all* Americans,"⁵ including those Americans served by small cable.

III. THE NEED FOR NATIONAL STANDARDS

A. SCBA supports the Commission in establishing national standards.

The Commission proposes national standards to govern interconnection, unbundling, pricing, resale and arbitration. Congress contemplated that the Commission would adopt national

⁴1996 Act § 251(f)(1).

⁵S. Conf. Rep. No 104-230, 104th Cong., 2d Sess 1 (1996) ("Joint Explanatory Statement").

standards to effectively implement the 1996 Act's provisions. For example, in the context of §251, Congress not only stated its expectation that the Commission establish national standards, but that the Commission must assume jurisdiction from a non-compliant state regulatory agency:

Subsection 251(I) requires the Commission to promulgate rules to implement section 251 within 6 months after enactment. If a State fails to carry out its responsibilities under section 251 in accordance with the rules promulgated by the Commission, the Senate intends that the Commission assume the responsibilities of the State in the applicable proceeding or matter.⁶

SCBA supports the Commission's goal in establishing "a uniform, pro-competitive policy framework."⁷ This approach is essential to accomplish the following:

- Rapid private sector deployment of advanced telecommunications and information technologies and services.
- Minimizing state variations on critical terms of interconnect and resale agreements.
- Increasing certainty for all participants thereby reducing capital costs and attracting investment.
- Achieving network uniformity across markets.
- Streamlining negotiations by reducing areas for dispute.
- Constraining the incumbent LECs' bargaining power in negotiations thereby reducing one critical barrier to entry - the high transaction costs of negotiating with a monopoly.

⁶Joint Explanatory Statement.

⁷Notice at ¶ 26.

- Providing guidance to the states for arbitrating interconnection agreements thereby reducing the cost, complexity, and interstate variations in these proceedings.

National standards will promote efficient competition in local telecommunications markets throughout the country. Efficient competition will benefit firms that can achieve technological innovation, improved service and cost control. Consumers will benefit through a more rapid transition to active competition, improved services, greater choice and lower costs. SCBA supports the comments of NCTA and CATA on the need for and content to national standards for interconnection and other implementation issues. For small cable, however, the national rules proposed in the Notice do not address significant barriers to entry.

B. The Commission needs to promulgate special national standards to remove barriers to entry for small cable.

To fully achieve Congress' goals of removing barriers to entry in telecommunications markets, the Commission should also adopt national standards applicable to the unique circumstances of small cable. The Commission has recognized the key role played by small cable in the delivery of video programming to suburban and rural areas.⁸ Small cable operators are well positioned to deliver other telecommunication services to these markets. To make this competition possible, however, national rules that accommodate small cable are essential.

The Commission has ample support to adopt such rules. Congress recognized in the 1996 Act that the public interest will be served by special statutory provisions that remove the

⁸*Small System Order* at ¶ 27.

administrative burdens of rate regulation on many small cable systems.⁹ Similarly, the Commission has found that small cable needs special rules. In the *Small System Order*, the Commission adopted a completely revised and streamlined rate regulatory regime for small cable systems and companies. In taking this action the Commission stated:

We acknowledge that a large number of smaller cable operators face difficult challenges in attempting simultaneously to provide good service to subscribers, to charge reasonable rates, to upgrade networks, and to prepare for potential competition. Since passage of the 1992 Cable Act, the Commission has worked continuously with the small cable industry to learn more about their legitimate business needs and how our rate regulations might better enable them to provide good service to subscribers while charging reasonable rates.¹⁰

The development of small cable rules under the 1992 Cable Act was an evolutionary process. The Commission issued the *Small System Order* two years after released the initial *Rate Order*.¹¹ For small cable, those years were, in a word, painful. The overly burdensome rules during those years hindered the growth and development of small cable in rural markets, hurting residents of those areas.

The Commission can utilize its experience with small cable in this proceeding. The Commission can adopt procompetitive, national standards now that explicitly address the unique circumstances of small cable.

C. Recommended standards for small cable.

⁹1996 Act § 301(c).

¹⁰*Small System Order* at ¶ 25.

¹¹The *Rate Order* was released May 3, 1993 and the *Small System Order* released June 5, 1995.

1. Duty of incumbent LECs to negotiate in good faith with small cable.

a. A verbal formula for "good faith" will not help small cable.

The Commission seeks comment on specific legal precedent regarding the duty to negotiate in good faith.¹² The Commission could adopt a verbal formula for "good faith" like that in the Uniform Commercial Code. In the UCC, "good faith" means honesty in fact in the conduct or transaction concerned¹³ and observance by a merchant of reasonable commercial standards of fair dealing in the trade.¹⁴ This generally aligns with the "no anticompetitive conduct" standard applied in *Southern Pacific Communications Co. v. ATT*.¹⁵ These standards may help guide state commissions and the courts in resolving disputes. These standards will not help small cable companies that do not have the resources to litigate the issue of bad faith negotiation. Small cable needs more than a verbal formula for "good faith". The critical reason: the inestimable transaction costs of dealing with an incumbent LEC.

To enter the market for telecommunications services, a small cable company must plan for several costs. In most jurisdictions, it must plan for the substantial legal and administrative costs of an administrative proceeding to obtain a LEC license or certificate of public convenience and necessity. A small cable company must plan for the capital costs of facilities and equipment. It

¹²Notice at ¶ 47.

¹³UCC § 1-201(19).

¹⁴UCC § 1-202, Official Comment.

¹⁵556 F. Supp. 825, 910-912 (D.C.C. 1983).

must also plan for the operating costs of providing the services offered. Small cable can reasonably ascertain these costs and budget for them. This process is essential to gaining access to capital.

One huge unknown cost remains: the cost of negotiating with an incumbent LEC. The Commission already has information concerning certain negotiation tactics employed by incumbent LECs.¹⁶ The Ameritech/Time Warner Cable interconnect disputes in Ohio represent another daunting example of the "staying power" of incumbent LECs. SCBA is familiar with other tactics employed by Ameritech and others including: (1) a constantly changing "cast of characters" in negotiations; (2) refusal to resell packaged business local exchange services; (3) refusal to resell business local exchange services at rates that agents may sell those services; (4) refusal to resell business local exchange services at increments offered retail customers; (5) the general strategy of "holding out"; and (6) the demonstrated incumbent LEC preference to rely on costly administrative and legal process rather than negotiations. In addition to the other costs related to the provision of telecommunications services, small cable companies cannot finance a state administrative case or lawsuit against an incumbent LEC that may not negotiate in accordance with the Commission's "good faith" standard. Without rules and procedures to help small cable estimate and limit the costs of "good faith" negotiations, few, if any, investors or lenders will provide capital.

¹⁶Notice at ¶¶ 31, 47 and 132.

The costs of such protracted negotiations, even with state arbitration, represent a barrier to entry for small cable. The Commission recognizes this concern about unequal bargaining power in negotiations with an incumbent LEC.¹⁷ To ensure that competition comes to regions served by small cable, the Commission must help level the playing field.

b. The Commission should impose specific small cable "good faith" negotiation standards and procedures on incumbent LECS.

For small cable to enter telecommunications markets controlled by incumbent LECs, "good faith" negotiation must mean that small cable operators can estimate and minimize the time and costs of interconnection and resale negotiations. Small cable companies do not have the resources to endure protracted negotiations followed by costly administrative proceeding. The Commission has recognized the financial and personnel constraints on small cable and has modified regulations to accommodate these limits in other contexts.¹⁸ Incumbents LECs have ample administrative and financial resources. This inequality represents a barrier to entry for small cable.

To remove this barrier, the Commission can adopt two requirements. First, incumbent LECs must designate a small company contact person. Upon request from a small company, an incumbent LEC should provide the name, address, phone numbers and times of availability of the designated small company contact. This named individual shall become familiar with, and responsible for, small company issues and negotiations with small companies. This will facilitate

¹⁷*Id.*

¹⁸*Small System Order* at ¶¶ 55-56.

communication and reduce the time and costs of communicating with and negotiating with a incumbent LEC. Similarly, it will be much more efficient for the incumbent LEC to have a designated small company contact. From the incumbent LECs' perspective, this rule will concentrate small company expertise in designated personnel. For small companies, this rule will decrease search costs and information costs. This reduction in transaction costs will reduce the administrative costs and burdens of interconnection and resale negotiations resulting in much more efficient transactions.

Second, the Commission should require a tightened and more structured dispute resolution timeline for small companies. SCBA advocates the following rules:

- A small cable company should be able to petition for arbitration within 60 days of submitting an interconnection or resale request to the incumbent LEC.
- The incumbent LEC would have 25 days to respond.
- The state commission shall resolve each issue set forth in the petition and the response, if any, and shall conclude the resolution of any unresolved issue within 90 days of the time to respond. The state commission shall impose appropriate conditions as required to implement section 251[©] and to accommodate the unique circumstances of a small competitive telecommunications provider.

These rules will accelerate the negotiation process and provide small cable companies expedited access to an abbreviated administrative process. These rules will decrease costs, increase procedural certainty and efficiency for small cable, and provide a heightened incentive

for incumbent LECs to promptly negotiate with small companies. These are the substantive results of a good faith standard that will help reduce barriers to entry for small cable.

2. Special standards for small cable in state mediation and arbitration proceedings.

The *Notice* seeks comment on whether the Commission should adopt standards or methods for arbitrating disputes.¹⁹ SCBA advocates adoption of specific arbitration standards for small companies seeking interconnection or resale from an incumbent LEC. As discussed above, the administrative costs and burdens of protracted negotiations and arbitration erect barriers to entry for small cable, both in terms of increased costs and reduced access to capital.

SCBA suggests arbitration standards that align with the good faith rules recommended above. First, each state commission shall designate a small company contact person. Commission rules should require state commissions to designate a small company contact person and publish or provide on request the name, address, phone numbers and times of availability of that person. This named individual shall become familiar with and responsible for small company issues, negotiations and mediations between small companies and incumbent LECs, and arbitration of small company cases. This will facilitate communication and reduce the time and costs of negotiating with and arbitrating against an incumbent LEC. The state commission small company contact person will also gain familiarity with terms that other small companies in that state have obtained from incumbent LECs. By acting a small company information clearinghouse, the small

¹⁹*Notice* at ¶ 268.

company contact person will assist small companies and incumbent LECs in minimizing issues in dispute, decreasing the times and costs of negotiation or arbitration, and allowing small companies to reduce the use of outside counsel and consultants. These reductions in transaction costs will help reduce the administrative costs and burdens on small cable and will produce much more efficient transactions.

Designation of a small company contact person at each state commission will also foster more efficient administration at the state level. By concentrating in named individuals responsibility for small company interconnect and resale matters, state commissions will increase expertise in resolving small company issues. Regulators will not have to "reinvent the wheel" for each new small company case.

Second, the Commission should adopt a national standard for the timing of state arbitration for small cable. The abbreviated timelines outline in the previous section will reduce costs and increase certainty for small cable.

3. Small cable companies eligible for special rules.

The Commission should also establish which small cable companies are eligible for the special small cable company provisions. SCBA supports the Commission's use of definition supplied by section 301(c) of the 1996 Act:

the term 'small cable operator' means a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the

United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$ 250,000,000.²⁰

In establishing that standard, Congress determined that cable companies meeting these standards required special regulatory treatment. Similarly, in adopting special small cable company rules, the Commission will recognize and accommodate the special barriers to entry faced by small cable. Use of the Section 301(c) standard will also foster administrative efficiency and harmonize Commission rules with the 1996 Act.

IV. THE COMMISSION SHOULD ADOPT NATIONAL STANDARDS TO GOVERN STATE APPLICATION OF THE RURAL TELCO EXEMPTION

The Commission seeks comment on whether it can and should establish some standards for implementing the rural telco exemption of Section 251(f)(1).²¹ To SCBA, the answers to these questions are plain: To help remove barriers to entry for small cable, the Commission *must* adopt national standards for application of the exemption.

A. The Commission has ample authority under the 1996 Act to adopt national rule to implement Section 251(f)(1).

The Commission has tentatively concluded that national standards are appropriate for most aspects of interconnection. Section 251(f)(1) is no exception. National standards will provide guidance for state commission, reduce issues for dispute and increase efficiency in determining when the rural telco exemption advances the public interest or unreasonably impedes competition.

²⁰1996 Act Section 301(c)(2).

²¹Notice at ¶ 261.

While, the statute delegates first level 251(f)(1) determinations to state commissions, this does not support a conclusion that implementation should be left to state commissions alone. The same rationale that supports national standards for interconnection, resale and arbitration issues supports national standards for the rural telco exemption.

Without national standards, the rural telco exemption can serve as an unreasonable barrier to entry. The Commission has authority under Section 253 to eliminate such barriers. Promulgating national rules on this issue will continue the Commission's proactive approach to implementation. Because small cable and rural telcos compete in many of the same small markets, small cable in particular needs the Commission to adopt national standards in this proceeding.

B. The Commission should adopt national standards to ensure that the exemption does not serve as an unwarranted barrier to entry.

The rural telco exemption has the potential of perpetuating monopoly control over telecommunications services in many markets served by small cable. To assure that monopoly control is maintained only when the public interest requires, the Commission should adopt the following national standards for implementation.

1. The Commission regulations should define "bona fide request".

Under the statute, a small cable company or other entity initiates state review of the exemption with a "bona fide request for interconnection, services, or network elements" submitted

to the state commission.²² To expedite the administrative process and avoid delay tactics by incumbent LECs²³, the Commission should define "bona fide" as follows:

In rendering a determination on a request under Section 251(f)(1), the state commission shall presume that any request for interconnection, services or network elements served by a cable operator providing cable service within the rural telephone company's service area is a bona fide request.

The Commission can recognize that small cable operators serving rural areas would not request interconnect unless it were genuinely desired. Small cable should not have to argue this with state commissions.

2. The Commission should define "not unduly economically burdensome."

SCBA understands that Congress intended to provide some protection for rural telcos. This shield should not be used as a sword to attack potential competitors. In nearly all cases, competition will bring some economic burdens to an erstwhile monopoly. The Commission should direct that economic burdens on all parties should be considered. Simple allegations that the incumbent telco's costs may increase should be insufficient to retain an exemption.²⁴ Similarly, the provision of universal service by a rural telco should not be a factor in retaining an

²²1996 Act § 251(f)(1)(A) and (B).

²³See, e.g., Ameritech letter dated April 25, 1996 to Regina Keeney, Chief Common Carrier Bureau, advocating definitions of "bona fide" that impose barriers sufficiently high to bar small cable from even applying for interconnection. The proposed standard would require disclosure of the proposed uses of each element, advance service purchase commitment, reimbursement of costs and a time period to process the application stretching over half a year.

²⁴When customers of an incumbent monopolist are siphoned off, costs per subscriber will increase. This is a natural consequence of competition that should not concern state commissions.

exemption. Nearly all rural telcos will be universal service providers. To this end, the Commission should adopt the following definition:

In rendering a determination on a request under Section 251(f)(1), the state commission shall consider the economic burdens on all parties involved including the requesting party, the rural telephone company, and consumers in the service area of both. Mere allegations that competition will raise costs and rates will not establish that a request is "unduly economically burdensome."

3. The Commission should define "technically feasible".

Allowing rural telcos to resist competition because it would not be "technologically feasible" threatens to create a disincentive to innovate. Rural customers are equally entitled to advanced telecommunications services. Rural telcos attempting to maintain a monopoly should not be permitted to claim that interconnection, unbundling, etc. is not technically feasible unless it would not genuinely be so under then current industry standards. Consequently, the Commission should adopt the following:

In rendering a determination on a request under Section 251(f)(1), the state commission shall consider a request as technically feasible unless a party shows that under current industry standards applicable to similarly situated incumbent LECs complying with a request is not technically feasible.

4. The Commission regulation should require rural telcos to have the burden of proof in state proceedings.

The Commission should adopt a national standard that assures that the procompetitive thrust of the 1996 Act permeates state commission proceedings. To this end, the Commission should direct state commissions to allocate the burden of proof in Section 251(f)(1)(B) proceedings to the rural telco. The burden should be upon that incumbent LEC that is *resisting* competition.

The Commission can also recognize that many rural telcos have benefitted for years from low-cost public financing. Commission rules should require the rural telco to show that compliance with a competitor's request would be unduly economically burdensome, technically unfeasible, or inconsistent with Section 254.

5. The Commission should explain the application of "grandfathered" rural telco exception.

Section 251(f)(1)(C) excludes from the rural telco exemption "a request from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming." The subsection then removes this exclusion for "a rural telephone company that is providing video programming as of the date [of the 1996 Act]." This exclusion to the exemption and the limitation on that exclusion raise key definitional issues. The Commission's expertise in regulating the delivery of video programming warrants national standards to guide state commissions.

a. The Commission should broadly define "providing video service."

The Commission should broadly define "providing video service" to include all means of distribution of multi-channel video service including traditional cable, multi-channel multi-point distribution systems, direct broadcast satellite, satellite master antenna television, open video systems, etc. The Commission must also include all affiliates of the telco in this definition as affiliated entities typically provide video due to structural separation requirements. For example, many small telcos currently provide DBS retail services through affiliated entities. Because the

exemption imposes a barrier to entry, the Commission should liberally define the limitation on that exemptions.

b. The Commission should narrowly define the service area applicable to the exception to the limitation.

The limitation to the exemption does not apply to a rural telco that "is providing video services" as of the date of the 1996 Act. The statute does not specify where or to how many subscribers a rural telco must provide video services to benefit from this exception. Without clarification, this provision could cause widespread avoidance of the interconnection requirement, undermining the pro-competitive goals of the 1996 Act.

Example. The situation faced by a small operator of small systems, Friendship Cable, with respect to the rural telephone co-operative in Davie County, North Carolina, provides an excellent example of how the limitation could be abused. During 1995, Yadkin Valley Telephone Membership Corporation ("Yadkin") obtained approval from the Commission to construct and operate a cable television system in one portion of its local service area. It built a competing cable system passing only one hundred homes. Only four of those homes subscribed. Later in 1995, Yadkin submitted another §214 application seeking to expand its cable system to another community. Should Yadkin be exempt from interconnection requirements because it served four customers? No, it should not. Should Yadkin be exempt throughout all of its exchanges? No, it should not.

The Commission should specify that the exclusion to the limitation should apply as follows: